



**NOTICE OF PROPOSED REVISION OF REGULATIONS  
AND STATEMENT OF REASONS**

**California Code of Regulations  
Title 2. Administration  
Division 1. Administrative Personnel  
Chapter 1. State Personnel Board  
Subchapter 1.5. Personal Services Contracts  
Article 6. Procedures that Apply to Contracts Under  
Government Code section 19130(a)**

**DATE:** November 9, 2006

**TO:** ALL STATE AGENCIES, EMPLOYEE ORGANIZATIONS,  
AND MEMBERS OF THE GOVERNOR'S CABINET

**SUBJECT:** PROPOSED AMENDMENTS TO REGULATIONS CONCERNING  
PROCEDURES THAT APPLY COST SAVINGS PERSONAL SERVICES  
CONTRACTS UNDER GOVERNMENT CODE SECTION 19130(a)

**AUTHORITY:**

Under authority established in Government Code (GC) section 18701 and Public Contract Code (PCC) section 10337, the State Personnel Board (SPB) proposes to amend Title 2 of the California Code of Regulations (2 CCR), sections 547.69 through 547.71, which provides for procedures utilized by the SPB to review proposed cost savings personal services contracts under GC section 19130, subdivision (a).

**REFERENCE:**

These regulations are amended to implement, interpret, and/or make specific GC sections 19130(a), 19131, 19134, and PCC section 10337.

**PUBLIC HEARING:**

Date and Time: January 9, 2007, from 9:45 a. m. to 10:30 a. m.  
Place: State Personnel Board  
801 Capitol Mall - First Floor Auditorium  
Sacramento, CA 95814

Purpose: To receive written and/or oral comments about this action.

**WRITTEN PUBLIC COMMENT PERIOD:**

The written public comment period will close Wednesday, December 27, 2006 at 5:00 p.m. This comment period allows time for SPB staff to provide copies of any written comments to the five-member State Personnel Board (Board) for consideration at the time of the hearing. Any person may submit written comments about the proposed amendments. To be considered by the Board, the appropriate person identified below must receive written comments before the close of the written public comment period.

Written comments may be submitted to:  
Senior Staff Counsel Bruce A. Monfross  
State Personnel Board  
801 Capitol Mall, MS 53  
Sacramento, CA 95814

or to: [bmonfross@spb.ca.gov](mailto:bmonfross@spb.ca.gov)

or faxed to his attention at: (916) 653-4256.

**AVAILABILITY OF PROPOSED TEXT AND STATEMENT OF REASONS/CONTACT PERSONS:**

Copies of the express terms of the proposed action, the Statement of Reasons, and all of the information upon which this proposal is based are available for review upon request to Bruce Monfross. The rulemaking file is available for review during normal business hours at SPB, 801 Capitol Mall, Sacramento, CA 95814. Additional information or questions regarding the substance of the proposed action should be directed to Bruce Monfross, as specified above. Questions regarding the regulatory process in conjunction with this regulation should be directed to Bruce Monfross at SPB, 801 Capitol Mall, MS 53, Sacramento, CA 95814, or by telephone at (916) 653-1456 or TDD (916) 653-1498.

**AVAILABILITY OF CHANGES TO PROPOSED TEXT:**

If any substantial and sufficiently related changes are made to the text as a result of comments received during the public comment period, SPB will make the full text of the changed regulations available for at least 15 days before the date the regulations are permanently amended.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:**

GC section 18216 specifies that regulations concerning contracting out shall be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with GC section 11340) of Part 1 of Division 3).

GC section 18701 authorizes the Board to prescribe, amend, and repeal regulations for the administration and enforcement of the Civil Service Act (GC section 18500 *et seq.*).

GC section 19130, subdivision (a), permits state governmental entities to enter into personal services contracts on the grounds that the contract will result in recognized cost savings to the state, subject to specified statutory requirements.

GC section 19131 requires a state agency proposing to enter into a personal services contract pursuant to the provisions of GC section 19130(a), to first notify the Board of its intention to do so, after which the Board is required to notify any employee organization effected by the proposed contract to request that the SPB review the contract for compliance with all legal requirements.

GC section 19134 provides specified criteria that must be satisfied before the Board can approve a personal services contract entered into under GC section 19130(a) for persons providing janitorial and housekeeping services, custodians, food service workers, laundry workers, window cleaners, and security guard services.

PCC section 10337 authorizes the Board to establish such standards and controls over approval of personal services contracts entered into pursuant to the provisions of GC section 19130 as are necessary to assure that the contract is consistent with merit employment principles and those requirements contained in Article VII of the California Constitution.

The purpose of the proposed regulations is to provide guidance to state agencies, employee organizations and potential state contractors as to how to calculate whether a contract is justifiable on a cost-savings basis. Recent contract appeals that have been adjudicated by the Board reveal that existing statutes and regulations are not specific enough to allow for accurate cost comparisons between the cost of providing services by contract and the comparable cost of having the same services provided by the civil service. This lack of specificity has created confusion and uncertainty on the part of those involved who have used a number of different methods of determining whether the contract will result in cost savings to the state in an amount sufficient to justify the contract.

In addition, the State Civil Service Act previously required each state agency and department to establish an effective affirmative action program with specified components, and to establish goals and timetables designed to overcome any identified underutilization of minorities and women in their respective organizations. Existing law further required the Board to conduct specified activities in this regard, and GC section 19130, subdivision (a)(4), mandated that personal services contracts entered into under GC section 19130, subdivision (a), could not adversely impact the state's affirmative action efforts.

Portions of those affirmative action provisions have, however, subsequently been held to be in violation of the California Constitution and the United States Constitution. As a result, existing regulations relating to GC section 19130, subdivision (a)(4), must be revised to come into compliance with existing equal employment opportunity laws.

#### **IMPACT ON SMALL BUSINESSES:**

It is anticipated that the proposed amendments will have a nominal impact on small businesses. Although the proposed amendments will require small businesses to provide more detailed information concerning their costs associated with those personal services contracts they enter into with the state, those businesses should already have ready access to the requested information in order for the business to be able to make a reasoned bid for the contract.

#### **LOCAL MANDATE:**

SPB has determined that the proposed action imposes no mandate on local agencies or school districts and, therefore, requires no reimbursement pursuant to GC section 17561.

#### **COST ESTIMATES OF PROPOSED ACTION:**

##### **Costs or Savings to State Agencies:**

The proposed regulations will involve no additional costs to any state agency. It is anticipated that the proposed regulations will enable state agencies to better ascertain whether a personal services contract that it proposes to enter into will, in fact, result in the level of cost savings necessary to justify the contract under existing law.

##### **Impact on Housing Costs:**

No impact.

##### **Costs or Savings in Federal Funding to the State:**

No impact.

**Costs or Savings to Local Agencies or School Districts Required to be Reimbursed:**

No impact.

**Other Nondiscretionary Costs or Savings Imposed on Local Agencies:**

No impact.

**Cost Impact on Private Persons or Businesses:**

It is anticipated that the proposed amendments will have a nominal impact on businesses, including sole proprietorships. Although the proposed amendments will require businesses to provide more detailed information concerning their costs associated with those personal services contracts they enter into with the state, those businesses should already have ready access to the requested information in order for the business to be able to make a reasoned bid for the contract.

**ASSESSMENT OF POTENTIAL ADVERSE ECONOMIC IMPACT ON BUSINESS:**

SPB has made an initial determination that the proposed action will have no significant statewide adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.

**ASSESSMENT REGARDING THE EFFECT ON JOBS/BUSINESSES:**

The adoption of the proposed action should neither create nor eliminate jobs in the state, nor result in the elimination, creation, or expansion of existing businesses in the state, nor create or expand businesses in the state.

**ALTERNATIVES STATEMENT:**

SPB has determined that no reasonable alternative considered by SPB, or that has otherwise been identified and brought to the attention of SPB, would be more effective in carrying out the purpose for which this action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

**FINAL STATEMENT OF REASONS:**

It is anticipated that the proposed regulations will be filed with the Office of Administrative Law pursuant to GC section 11346.9, and shall include a Final Statement of Reasons for the amendments. Copies of the Final Statement of Reasons may be obtained from the contact person when it becomes available.

**ACCESSING INFORMATION REGARDING THIS RULEMAKING FILE ON THE  
STATE PERSONNEL BOARD WEBSITE:**

The text of the proposed amendments, the Notice of Proposed Amendment of Regulations and Statement of Reasons

**STATEMENT OF REASONS:**

The purpose of the proposed regulations is to provide guidance to state agencies and employee organizations regarding what information must be provided to the Board in those cases where the Board is reviewing proposed cost-savings contracts under Government Code section 19130, subdivision (a). Existing statutes and regulations do not provide sufficient specificity as to what exact information must be provided to the Board, thereby creating confusion, uncertainty, and needless litigation concerning whether a proposed personal services contract can be justified as a cost-savings contract.

In addition, the State Civil Service Act previously required each state agency and department to establish an effective affirmative action program with specified components, and to establish goals and timetables designed to overcome any identified underutilization of minorities and women in their respective organizations. Existing law further required the Board to conduct specified activities in this regard, and GC section 19130, subdivision (a)(4), mandated that personal services contracts entered into under GC section 19130, subdivision (a), could not adversely impact the state's affirmative action efforts.

Portions of those affirmative action provisions have, however, subsequently been held to be in violation of the California Constitution and the United States Constitution and the law has been redrafted to reflect a continuing commitment to equal employment opportunity. As a result, existing regulations relating to GC section 19130, subdivision (a)(4), must be revised to reflect changes in the law.

LAURA M. AGUILERA  
Assistant Executive Officer

Attachment: Proposed Text of Amended Regulations

**California Code of Regulations**  
**Title 2. Administration**  
**Division 1. Administrative Personnel**  
**Chapter 1. State Personnel Board**  
**Subchapter 1.5. Personal Services Contracts**

**Article 6. Procedures that Apply to Contracts Under Government Code Section 19130(a)**

**§ 547.69      *State Agency Notice of Intent to Execute Cost Savings Personal Services Contract.***

*(a) Any state agency proposing to execute a contract pursuant to Government Code section 19130(a), shall file with the board a Notice of Intent to Execute Personal Services Contract.*

*(b) The Notice of Intent shall include the following:*

*(1) A complete copy of the proposed contract;*

*(2) The following information with respect to those civil service employees who would otherwise perform the services to be rendered under the contract:*

*(A) The number of civil service employees in each classification who would otherwise perform the services;*

*(B) The number of hours required for each civil service employee to perform the services;*

*(C) The base hourly wage, as set forth in the State of California Civil service Pay Scale, that the agency would be required to pay civil service employees to perform those services to be rendered under the contract.*

*(i) The cost of any employee benefits, as set forth in section (b)(2)(D), direct overhead costs, as set forth in section (b)(2)(E), or indirect overhead costs, as set forth in section (b)(2)(F), shall not be included in the base hourly wage calculation;*

*(D) The hourly cost of employee benefits the agency would be required to provide to each civil service employee to perform those services to be rendered under the contract.*

*(i) For purposes of this section, employee benefits shall be itemized and limited to the following: health insurance premiums; dental insurance premiums; vision insurance premiums; employer contributions to employee retirement plans, including social security; paid holidays; sick leave benefits; and vacation leave benefits.*

*(ii) Pursuant to Government Code section 19134, subdivision (c), benefit costs shall be established using rates based on single employee, employee plus one dependent, and employee plus two or more dependents, or the costs may be based on a blended rate, subject to the determination of the Department of Personnel Administration;*

*(E) The hourly cost of direct overhead costs the state agency would incur if it employed civil service employees to perform those services to be rendered under the contract.*

*(i) For purposes of this section, direct overhead costs shall be itemized and include, but not be limited to, the following: workers compensation insurance premiums; unemployment insurance premiums; disability insurance premiums; additional rent and utilities that would only be incurred if the services in question were performed by the civil service; additional equipment and materials needed to perform those services to be rendered under the contract that would only be incurred if the services in question were performed by the civil service; uniforms; training mandated by law or otherwise required by the agency; background investigations; and reimbursement for required licenses or certificates;*

*(F) The hourly cost of indirect overhead costs the state agency would incur if civil service employees were to perform those services to be rendered under the contract. Indirect costs shall not be included unless the cost can be attributed solely to the function in question and would not exist if that function were not performed in state service.*

*(i) For purposes of this section, indirect overhead costs shall be itemized and include, but not be limited to, the following: the pro rata share of existing administrative salaries and benefits, rent, utilities, equipment costs and materials;*



*(G) The total hourly cost, based on those costs set forth in subdivisions (C) through (F), the state agency would incur for each civil service employee, if civil service employees were to perform those services to be rendered under the contract.*

*(3) The following information with respect to the contract employees who are to perform the services to be rendered under the contract:*

*(A) The number of employees required to perform each of the services to be rendered under the contract;*

*(B) The number of hours each employee shall perform services under the contract;*

*(C) The base hourly wage that will be paid to each contract employee performing a function under the contract that would otherwise be performed by the civil service.*

*(i) The cost of any employee benefits, as set forth in section (b)(3)(D), direct overhead costs, as set forth in section (b)(3)(E), or any indirect overhead costs experienced by the contractor, shall not be included in the base hourly wage calculation;*

*(D) The hourly cost of employee benefits that will be provided to each contract employee.*

*(i) For purposes of this section, employee benefits shall be limited to the following: health insurance premiums; dental insurance premiums; vision insurance premiums; employer contributions to employee retirement plans, including social security; paid holidays; sick leave benefits; and vacation leave benefits;*

*(ii) Pursuant to Government Code section 19134, subdivision (c), benefit costs shall be established using rates based on single employee, employee plus one dependent, and employee plus two or more dependents, or the costs may be based on a blended rate, subject to the determination of the Department of Personnel Administration;*

*(iii) Pursuant to Government Code section 19134, subdivision (d), if, in lieu of providing actual benefits as listed in subdivision (b)(3)(D)(i) of this section, the private contractor intends to provide a cash equivalent, the amount of the cash equivalent shall be equal*

*to the applicable determination under subdivision (b)(3)(D)(ii) of this section;*

*(E) The hourly direct overhead costs that the private contractor will incur for each employee employed under the contract.*

*(i) For purposes of this section, direct overhead costs shall be itemized and include, but not be limited to, the following: workers compensation insurance premiums; unemployment insurance premiums; disability insurance premiums; uniforms; equipment and materials needed to perform those services to be rendered under the contract; training mandated by law or otherwise required by the agency; background investigations; and reimbursement for required licenses or certificates;*

*(F) The annual costs the state agency will incur for activities related to inspection, supervision and monitoring activities to ensure proper administration of the contract;*

*(G) The total hourly amount the private contractor will charge the state agency for each contract employee to perform those services to be rendered under the contract.*

*(4) The industry level hourly wage for those services to be rendered under the contract. The term "industry level hourly wage " as used in this section means the prevailing hourly rate of pay for the type of work in question in the local area where the contract would be let, as measured by reliable and statistically representative wage surveys such as those conducted by the Bureau of Labor Statistics or the Department of Industrial Relations.*

*(5) That the contract will not result in the displacement of civil service employees.*

*(A) For purposes of this section, displacement shall be limited to: layoff; involuntary demotion; involuntary transfer to a new class; involuntary transfer to a new location requiring a change of residence, and as defined in Department of Personnel Administration regulations; and time base reductions. Displacement does not include: changes in shifts or days off; reassignment to other positions within the same class and general geographic location;*

*(6) That the contract will not have an adverse impact on State Equal Employment Opportunity efforts, as set forth in Section 547.74;*

*(7) That the contract was awarded through a publicized, competitive bidding process;*

(8) *That the contract includes specific provisions pertaining to the qualifications of the staff that will perform each aspect of the work under the contract, as well as assurances that the contractor's hiring practices meet applicable nondiscrimination standards;*

(9) *That the potential for future economic risk to the state from potential contractor rate increases is minimal.*

(10) *That the contract is with a firm.*

(A) *A firm means a corporation, partnership, nonprofit organization, or sole proprietorship; and*

(11) *That the potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by the state government.*

(c) *The board shall, within 5 days of receipt of the Notice of Intent to Execute Personal Services contract, forward a copy of the Notice to the employee organization(s) that represent(s) those civil service employees who would otherwise perform those duties to be rendered under the contract.*

*[Authority cited: Section 18701, Government Code. Reference: Sections 18670, 19130, 19131, 19134, Government Code; 10337, Public Contract Code.]*

**§ 547.70      *Employee Organization's Request for Review.***

(a) *Any employee organization that receives notification from the board, pursuant to Section 547.64(c), of a state agency's Notice of Intent to Execute Personal Services contract shall, within 15 days of service of such notice, be entitled to file with the board and to serve upon the state agency, a request for review of the contract for compliance with the requirements of Government Code section 19130(a). The employee organization's request for review shall identify the contract to be reviewed and include the following:*

(1) *Specific and detailed factual information that demonstrates how the contract fails to meet the conditions specified in Government Code section 19130(a); and*

(2) *Documentary evidence and/or declarations in support of the employee organization's position.*

(b) *The employee organization shall file a proof of service with the board that states when and how it served a copy of its request for review upon the state agency.*

*[Authority cited: Section 18701, Government Code. Reference: Sections 18670, 19130, 19131, 19134, Government Code; 10337, Public Contract Code.]*

**§ 547.71 State Agency Reply.**

(a) *Within 10 days after being served with the employee organization's request for review, the state agency may file with the board and serve upon the employee organization and the proposed contractor(s) a written reply to the employee organization's request.*

(b) *The state agency shall file a proof of service with the board that states when and how it served a copy of its reply upon the employee organization and the proposed contractor(s).*

*[Authority cited: Section 18701, Government Code. Reference: Sections 18670, 19130, 19131, 19134, Government Code; 10337, Public Contract Code.]*

**§ 547.69 72 Undercut of State's Wage in Cost-Savings Based Contracts.**

When a Personal Services Contract is based on cost savings, a contractor's wages shall be at or above the industry's level and shall not undercut the State's pay rate for comparable work by more than 15%, except that if in a nonmetropolitan area of the State the contractor's rate of pay is more than 15% below the state rate, the contract may be approved if the contractor's rate of pay is closer to the State rate than it is to the comparable industry rate in the local area. In no case shall a contractor's wages be more than 25% below the State's pay rate. Comparison of wages for this purpose shall not include the cost of benefits.

(a) Comparison of the contractor's and State's hourly rates will be made as follows:

(1) For contracts of one year or less duration, comparison shall be to the first step of the salary range of the class designated as the type of work performed by the Personal Services Contract except for classes with a special in-grade salary adjustment (SISA). In this case, comparison shall be made to the midpoint between the first and second steps.

(2) For contracts with durations of over one year up to two years, comparison shall be to the midpoint between the first and second steps of the salary range of the class designated as the type of work performed by Personal Services Contract except for classes with a SISA. Comparison in this case shall be made to the second step.

(3) For contracts with durations of over two years, comparison shall be to the second step of the salary range of the class designated as the type of work performed by Personal Services Contract.

(b) Cost-savings based Personal Services Contracts with duration of more than one year shall contain a clause indicating that in the event of an increase in the State's pay rates, the contractor's wage rate will be reviewed and adjusted in subsequent years of the contract so as not to exceed the relationship with State and industry rates identified in the first paragraph of this section.

(c) The term "industry rate" as used in this section means the prevailing hourly rate of pay for the type of work in question in the local area where the contract would be let, as measured by reliable and statistically representative wage surveys such as those conducted by the Bureau of Labor Statistics or the Department of Industrial Relations.

[Note: Authority cited: section 18701, Government Code. Reference: Section 19130(a)(2).]

**§ 547.71 73 Amount of Savings.**

(a) Savings generated through cost-savings based personal services contracting must justify the size and duration of the contracting agreement. To do so, such contracts must meet one of the following criteria:

(1) Achieve a savings of 10% or more compared to the cost of performing the same function within the civil service over the duration of the contract; or

(2) Achieve a savings of at least \$50,000, in terms of 1988 dollars, per year compared to the cost of performing the same function within the civil service over the duration of the contract, provided that the savings equal at least 5% of the comparable civil service cost. The \$50,000 standard shall be adjusted at the beginning of each fiscal year to reflect changes in the California Consumer Price Index as reported by the Department of Industrial Relations, and the adjusted figure shall be communicated by Board staff to all departments.

(b) Such savings need not be attained during each year of a multiyear contract, providing the overall savings meet one of the aforestated requirements.

[Note: Authority cited: Section 18701, Government Code. Reference: Sections 19130(a)(5) and 19130(a)(6), Government Code.]

**§ 547.70 74 ~~Affirmative Action~~ Equal Employment Opportunity Impact.**

~~(a) For a department to be able to consider cost savings based contracts, all of the following equal employment/affirmative action criteria must be met:~~

~~(1) The contract will not impact a key position in an affirmative action target class or a key location for affirmative action hiring.~~

~~—— (2) — The department is making reasonable progress toward meeting  
—— affirmative action goals and timetables identified by the department under the  
—— provisions of Government Code Section 19797.~~

~~—— (3) — The department can continue to make reasonable progress toward  
—— meeting affirmative action goals and timetables absent the positions  
—— affected by the contract.~~

~~—— (4) — The contractor is in compliance with the statutes and regulations  
—— administered by the Department of Fair Employment and Housing.~~

~~(b) — An "affirmative action target class" as used in this section is defined as any class  
of positions which:~~

~~—— (1) — a department has identified for focused recruitment purposes  
—— because there is underutilization as defined by Government Code Section  
—— 19791(c);~~

~~—— (2) — has entry level minimum qualifications; and~~

~~—— (3) — has at least five vacancies anticipated during the year.~~

~~(c) — A position in an affirmative action target class or a location for affirmative action  
hiring that is specifically identified in the department's most recent affirmative action  
plan as required by Government Code Section 19797 is considered to be a "key  
position" or "key location."~~

~~(d) — "Reasonable Progress" as used in this rule is defined as hiring that is  
proportionately at least equal to overall hiring in the State civil service for the occupation  
covered by the contract.~~

*No state agency may enter into a cost savings contract under Section 19130,  
subdivision (a) unless the agency can establish:*

*(a) Approval of the contract will not unreasonably interfere with the ability of the  
agency to comply with its equal employment opportunity plan; and*

*(b) The contractor is in compliance with the statutes and regulations administered by  
the Department of Fair Employment and Housing*

*[Note: Authority cited: Section 18701, Government Code. Reference: Sections 11135-  
11139.58, 19130(a)(4), 19130(a)(8), 19790, 19791, 19793, 19794, and 19797 and  
19798.5, Government Code; and Section 1431, Labor Code.]*